

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	MM Docket No. 98-112
	)	RM-9027
Amendment of Section 73.202(b)	)	RM-9268
Table of Allotments	)	RM-9384
FM Broadcast Stations	)	
(Anniston and Ashland, Alabama; College Park,	)	
Covington, Milledgeville and	)	
Social Circle, Georgia)	)	

To: Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

**RECEIVED**  
MAY 21 2001  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**OPPOSITION TO PETITION FOR RECONSIDERATION**

WNNX LICO Inc. ("WWWQ"), licensee of WWWQ(FM) (formerly WHMA(FM), College Park, Georgia, by its counsel, respectfully submits its Opposition to the Petition for Reconsideration ("Recon. Petition II") filed by Preston W. Small ("Small") on March 12 and 30, 2001 with respect to the Memorandum Opinion and Order ("MO&O"), (DA 01-333, released February 9, 2001).<sup>1</sup> Like Small's first Petition for Reconsideration in this docket ("Recon. Petition I"), Small's Recon. Petition II fails to meet the Commission's standards on reconsideration and review, and equally fails to demonstrate Commission error in its findings that the public interest would be served by the provision of first local services to College Park, Georgia and Ashland, Alabama, a new service to approximately 1.7 million people and the elimination of two short spacings and existing interference. Therefore, Recon. Petition II should be denied. In support thereof, WNNX states as follows:

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1. Small's Recon. Petition II was published in the Federal Register on May 4, 2001, 66 Fed. Reg. 22555, establishing May 21, 2001 as the filing deadline for oppositions. Hence, WWWQ's instant Opposition to the Recon. Petition II is timely filed.

1. In the MO&O, (DA 01-333, released February 9, 2001) in this docket, the Commission properly denied the Recon. Petition I filed by Small, and found that WWWQ had adequately established that College Park, Georgia was fully deserving of a first local service and met all eight Tuck factors for independence of Atlanta. Nothing in Small's Recon. Petition II raises any new questions of law or facts that have not already been thoroughly discussed and disposed of by the Commission.

### **Background**

2. The Notice of Proposed Rule Making, 13 FCC Rcd 12738 (1998) ("NPRM"), in this docket set forth two mutually exclusive proposals. WWWQ proposed the reallocation of Channel 263C from Anniston, Alabama to College Park, Georgia as a Class C3 station to provide that community's first local service.<sup>2</sup> Small, licensee of Station WLRR(FM), Channel 264A, Milledgeville, Georgia, initially proposed the substitution of Channel 264C3 for Channel 264A, and reallocation of Channel 264C3 to Covington, Georgia as that community's second local service. In response to the NPRM, Small filed a Counterproposal which proposed reallocating Channel 264C3 to Social Circle, Georgia, instead, as that community's first local service.

3. After analyzing the competing WWWQ and Small proposals, the Report and Order ("R&O"), 15 FCC Rcd 9971 (2000), adopted the proposal set forth by WWWQ. The R&O concluded that the public interest benefits in adopting the WWWQ proposal (which included, among other things, first local service to College Park, Georgia and Ashland, Alabama, new service to approximately 1.7 million people and elimination of a grandfathered short-spacing) were superior to the public interest benefits that would be realized in adopting the Small proposal.

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2. WWWQ also proposed the allocation of Channel 261C3 to Anniston, Alabama and Channel 264A to Ashland, Alabama as new local services.

4. In the MO&O, the Commission determined that WWWQ adequately demonstrated College Park's entitlement to first local service consideration because of its independence from Atlanta. The Commission re-evaluated WWWQ's proposal in light of the standards set forth in prior case precedent, Huntington Broadcasting Co., 192 F.2d 33 (D.C. Cir. 1951); RKO General (KFRC), 5 FCC Rcd 3222 (1990); and Faye and Richard Tuck, 3 FCC Rcd 5374 (1988).

5. In the MO&O, the Commission correctly applied the appropriate factors to WWWQ's proposal and fully discussed the facts which led to the finding that College Park is a thriving, independent community in need of its own local station. The MO&O reaffirmed that WWWQ's proposal satisfies the Tuck analysis -- the extent to which the station will provide service to the entire Urbanized Area, the relative population of the suburban and central city and, most importantly, the independence of the suburban community. MO&O at para.6. In the MO&O, the Commission emphasized that independence of the proposed community from the central city is the most critical factor. Id. Indeed, in the MO&O, the Commission once again analyzed all eight (8) factors of the Tuck analysis, and reached the same conclusion -- College Park, Georgia is most deserving of a first local service.

### **Argument**

#### Small's Recon. Petition II Should be Dismissed as a Matter of Law

6. Small raises matters in its Recon. Petition II that were previously raised and thoroughly discussed and disposed of by the Commission. Under Section 1.429(i) governing petitions for reconsideration filed in rulemaking proceedings, "a second petition for reconsideration may be dismissed by the staff as repetitious." 47 C.F.R. §1.429(i). Whether the Commission considers Small's Recon. Petition II as a petition for reconsideration or an application for review, Small fails to meet the legal standards required by both rules to justify reversing the Commission's MO&O.

7. Moreover, if considered as an Application for Review pursuant to Section 1.115 of the Commission's Rules, Small's Recon. Petition II fails to concisely and plainly state the questions presented for review with reference to findings of facts or conclusion of law. Small is wrong when he states that the MO&O must compare this request with an earlier WHMA reallocation proposal for Sandy Springs, Georgia. The instant proposal for College Park stands on its own facts. The previous request has no legal or factual bearing on the instant proceeding. The instant docket must be analyzed on the merits of the technical showing, public interest showing and other factors that WWWQ made in its filing.<sup>3</sup>

8. With respect to signal population coverage, the Recon. Petition II fails to specify with particularity the factors that warrant Commission reconsideration. The MO&O acknowledges that signal population coverage is a secondary consideration to determine whether or not a Faye and Richard Tuck showing is required. MO&O at para. 6. Citing to Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995), the Commission determined that since less than 50% of the urbanized area would receive new city grade service from the proposed reallocation, this factor was not an impediment to a finding of independence, citing to Oraibi and Leupp, Arizona, 14 FCC Rcd 13547 (1999) and Mullins and Briarcliffe Acres, South Carolina, 14 FCC Rcd 10516 (1999), where the Commission approved a reallocation with the 70 dBu signal covering over 90% of an urbanized area, a signal coverage far greater than the proposed signal coverage of the Atlanta Urbanized Area.

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3. Nevertheless, there are several distinguishing factors including the elimination of short spacing and interference to WUSY, Cleveland, Tennessee here (R&O at para. 6), College Park's local government and other independence factors and, as a result, better overall public interest benefits.

9. Likewise, with respect to relative size and proximity of College Park to an urban center, the Recon. Petition II fails to specify with particularity the factors that warrant Commission reconsideration. The MO&O once again provided case precedent where the Commission previously had approved first local services in instances with a population percentage less than WWWQ's proposed 5.2%. "While this population is only 5.2% of the population of Atlanta, such a percentage has not precluded favorable consideration as a first local service." MO&O at para. 6, citing Ada, Newcastle and Watonga, Oklahoma, 11 FCC Rcd 16896 (1996).

10. As to the Tuck analysis, Small's Recon. Petition II fails to concisely and plainly state the questions presented for review with reference to findings of facts or conclusion of law. The MO&O fully addresses all eight (8) factors establishing that College Park, Georgia is most deserving of a first local service. The administrative record before the Commission strongly evidences that College Park is an established community of over 20,000 residents with enough advertising base to support a local radio station. Despite Small's protestations, the fact remains that the administrative record is so strong on the Tuck factors that the Commission need not review its analysis again in this area. The original Petition for Rule Making, Comments, and Reply Comments filed by WWWQ are replete with community indicia to establish that College Park, Georgia, one of the most populous cities in the state should not be without first local service.

Summary Dismissal of the Recon. Petition II is Warranted.

11. Small's failure to concisely and plainly state the questions presented for review coupled with the Commission's full analysis and discussion of the merits of WWWQ's filing warrant summary dismissal of Small's Recon. Petition II. Pursuant to Section 1.115(g) of its Rules, the Commission may deny the application for review in whole or part with or without specifying reasons for the decision. 47 C.F.R. §1.115(g). After a thorough review and analysis of earlier WWWQ's

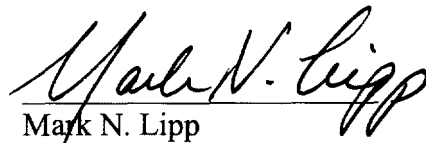
filings, there is overwhelming support for a finding that the R&O and MO&O were correctly decided. No further discussion is necessary to justify awarding College Park its first local service.

### **Conclusion**

12. College Park is an independent, and vibrant community and provides its 20,000 plus residents with all necessary services. The Small Recon. Petition II provides no factual basis or legal precedent to justify disturbing the MO&O's conclusion that College Park is entitled to its first local service. It may be fairly said that Small simply disagrees with the Commission's view of College Park's need for local service. But Small's own opinion does not justify a different finding where based on a substantial body of case law, the Commission's decision was well supported. Accordingly, Small's Petition for Reconsideration should be denied once again. In this regard, the Commission should adopt an order similar to the one attached hereto as Exhibit A.

Respectfully submitted,

WNNX LICO, INC.

A handwritten signature in black ink, appearing to read "Mark N. Lipp", written over a horizontal line.

Mark N. Lipp

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May 21, 2001

**EXHIBIT A**

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
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(Anniston and Ashland, Alabama; College Park,	)	
Covington, Milledgeville and	)	
Social Circle, Georgia)	)	

**SECOND MEMORANDUM OPINION AND ORDER**  
(Proceeding Terminated)

By the Commission:

Adopted: \_\_\_\_\_

Released: \_\_\_\_\_

The Commission has before it a Petition for Reconsideration<sup>1</sup> filed by Preston Small directed to the Memorandum Opinion and Order, DA 01-333, released February 9, 2001 and Report and Order, 15 FCC Rcd 9971 (2000), in this proceeding. WNNX LICO Inc. filed an Opposition to Petition for Reconsideration. Preston Small filed a Reply to Opposition to Petition for Reconsideration. After a complete review of the record in this proceeding and pursuant to Section 1.115(g), we deny the Petition for Reconsideration.

Accordingly, IT IS ORDERED, That the aforementioned Petition for Reconsideration filed by Preston Small IS DENIED.

IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

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1. Pursuant to Section 1.115 of our Rules, we will treat Small's Petition for Reconsideration as an application for review. 47 C.F.R. §1.115

## CERTIFICATE OF SERVICE

I, Lisa M. Balzer, a secretary in the law firm of Shook, Hardy & Bacon L.L.P., do hereby certify that on this 21st day of May, 2001, I have mailed the foregoing Opposition To Petition For Reconsideration to the following:

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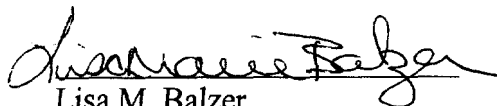
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